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SUPREME COURT OF THE UNITED STATES

CITY OF EDMOND ET AL. *v.*
WAYNE ROBINSON ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 95–879. Decided May 13, 1996

The petition for a writ of certiorari is denied.

CHIEF JUSTICE REHNQUIST, with whom JUSTICE SCALIA and JUSTICE THOMAS join, dissenting.

I dissent from the denial of certiorari. Petitioners identify a division between the Courts of Appeal about whether a city violates the First Amendment when its seal includes as one component a religious symbol, in particular a Latin cross. Compare 68 F. 3d 1226 (CA10 1995) and *Harris* v. *City of Zion*, 927 F. 2d 1401 (CA7 1991) (finding an Establishment Clause violation) with *Murray* v. *City of Austin*, 947 F. 2d 147 (CA5 1991), cert. denied, ___ U. S. ___ (1992) (finding no violation). Their petition also suggests—though it does not expressly raise—a serious question about respondents' standing to press their First Amendment claim.

The Court of Appeals observed that neither party disputed respondents' standing, but correctly observed that "standing" was always necessary. 68 F. 3d, at 1229, n. 6. Last Term, we pointed out that "[t]he question of standing is not subject to waiver: 'We are required to address the issue even if the courts below have not passed on it, and even if the parties fail to raise the issue before us.'" *United States* v. *Hays*, ___ U. S. ___ (1995) (slip op., at 5) (quoting *FW/PBS, Inc.* v. *Dallas*, 493 U. S. 215, 230–231 (1990)).

The Court of Appeals noted respondents had standing under its decision in *Foremaster* v. *City of St. George*, 882 F. 2d 1485, 1490 (CA10 1989), cert. denied, 495 U. S. 910 (1990). 68 F. 3d, at 1229, n. 6. In *Fore-*

master, the Court of Appeals inquired whether a plaintiff challenging a city logo containing a depiction of the local Mormon temple alleged a direct injury when he alleged that he was "confronted by the logo on a daily basis." 882 F. 2d, at 1491. Reviewing our decision in *Valley Forge Christian College* v. *Americans United for Separation of Church and State, Inc.*, 454 U. S. 464 (1982), the court held that "an allegation of direct personal contact with the offensive action alone" alleged a direct injury, and that it was not necessary for a plaintiff to allege also that "he has altered his behavior as a consequence" of the offensive action. 882 F. 2d, at 1490.

The only factual statement as to what injury respondents in the present case might have suffered is that "[p]laintiffs are non-Christians who live or work in Edmond." 68 F. 3d 1226, 1228. Mere presence in the city, without further allegations as to injury, quite clearly fails to meet the standing requirements laid down in cases such as *Valley Forge*. There, we said:

> "Although respondents claim that the Constitution has been violated, they claim nothing else. They fail to identify any personal injury suffered by them *as a consequence* of the alleged constitutional error, other than the psychological consequence presumably produced by observation of conduct with which one disagrees. That is not an injury sufficient to confer standing under Art. III . . . ." 454 U. S., at 485.

The *Foremaster* court acknowledged that there was disagreement among the Courts of Appeals about whether *Valley Forge* allowed standing to a plaintiff alleging direct injury by being exposed to a state symbol that offends his beliefs. 882 F. 2d, at 1490; see also *Freedom From Religion* v. *Zielke*, 845 F. 2d 1463 (CA7 1988) (finding this allegation insufficient); *Saladin* v. *City of Milledgeville*, 812 F. 2d 687 (CA11 1987); *Hawley* v. *City of Cleveland*, 773 F. 2d 736 (CA6 1985) (finding it sufficient), cert. denied, 475 U. S. 1047 (1986). Because there are serious arguments on both sides of

this question, the Courts of Appeals have divided on the issue, and the issue determines the reach of federal courts' power of judicial review of State actions, I would take this opportunity to consider it.

For these reasons, I would grant the petition for certiorari and request the parties to address the additional question of whether respondents showed an injury in fact sufficient to give them standing to raise their claim of violation of the Establishment Clause of the First Amendment.